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February 27, 2003

Donald Abelson, Chief,
International Bureau,
Federal Communications Commission,
445 12th St., S.W.,
Washington, DC 20554.

Re: Petitions for Protection From Whipsawing on the US-Philippines
Route (IB Docket No. 03-38)
Ex Parte Presentation
Philippine Long Distance Telephone Company ("PLDT")

Dear Mr. Abelson:

At our meeting yesterday, you asked that we specifically address the allegations of AT&T that no Philippine carrier is willing to offer it a termination rate of less than 12 cents per minute and its assertion that this is tantamount to a showing of collusion and anticompetitive behavior among Philippine carriers. PLDT strongly disputes AT&T's factual assumptions and legal conclusions and welcomes the opportunity to offer the following for your consideration.

1. PLDT decided to seek a 12 cents per minute termination rate independently of other competitive carriers. As set forth in PLDT's comments in this proceeding, and supported by the declaration of Ramon Alger P. Obias, PLDT's decision regarding termination rates was made independently of any decision by any other carrier as to the termination rates it will charge. PLDT has not participated in the decision making of any other Philippine carrier. Neither AT&T nor any other party has submitted any facts to the contrary.

2. PLDT has provided legitimate and credible business justifications for independently seeking a 12 cents per minute termination rate. As explained to you by PLDT's Ray Espinosa at our meeting yesterday, there are several legitimate business reasons why PLDT has sought to raise its termination rates, including:

- In cutting its rates to a low of 8 cents per minute in 2000, PLDT acquiesced to the then prevailing market conditions, and was

reassured during negotiations with AT&T and others that lowering its rates to that level would lead to a substantial increase in fixed-line traffic volume. Market conditions have since changed, and the promised increase in volume flowing from the 8 cents per minute rate never materialized.

- Like many telecommunications carriers worldwide, PLDT's revenues are depressed. In addition, PLDT, like most other Philippine carriers, is highly leveraged, and has seen its costs increase dramatically in recent years. For example, PLDT's foreign debt costs have almost tripled because of the drop in the exchange rate between the Philippine peso and the American dollar (from about 20 pesos per dollar at the time the borrowing was incurred to 54 pesos per dollar currently). This, in turn, has forced PLDT to not only seek an increase in its termination rates to maintain and support its network, but also to raise its national long distance rates. PLDT assumes that other Philippine carriers are suffering from similar market pressures.
- As set forth in its comments, PLDT's new termination rates are justified under its Cost Manual as submitted annually to the Philippine National Telecommunications Commission ("NTC"). PLDT urges the Commission to take into account the fact that the NTC, an independent Philippine telecommunications regulator, has approved the rates in question and found them to be just and reasonable.

3. The record does not show that no other carrier has offered termination rates below 12 cents per minute. PLDT is not privy to the individual agreements and rate negotiations that may have occurred, or be occurring, between U.S. carriers and other Philippine carriers. PLDT notes, however, that Arbinet data for February 26, 2003 shows various termination rates being offered for fixed line traffic into the Philippines, including rates for termination of fixed traffic into Manila at below 12 cents per minute. (See Attachment A). This strongly contradicts AT&T's assertion that no termination rates below 12 cents are available, and that AT&T has no alternative but to pay that rate.

4. Even if it were shown that no Philippine carrier is willing to offer a termination rate below 12 cents per minute, that would not exclude the possibility that Philippine carriers are acting independently. Even if all the facts alleged by AT&T were accepted as true, and they should not be, AT&T has shown no more than the existence of "conscious parallelism" among Philippine carriers. The Supreme Court has unambiguously held that such parallel behavior alone is insufficient to prove the existence of a collusive

agreement.¹ Rather, the “antitrust law limits the range of permissible inferences” that may be drawn from consciously parallel action, and “conduct as consistent with permissible competition as with illegal conspiracy does not, standing alone, support an inference of antitrust conspiracy.”² Thus, for AT&T to meet its burden of showing unlawful or anticompetitive behavior, it “must present evidence ‘that tends to exclude the possibility’ that the alleged conspirators acted independently.”³

AT&T’s bare allegations fail this test. What is more, PLDT has shown that it has legitimate and credible business justifications for independently seeking a 12 cents per minute termination rate, and, as shown below, there are strong objective indicia that the Philippine telecommunications market is behaving competitively.

It is, moreover, a common phenomenon of competitive markets that the rates of competing carriers gravitate toward the same level. When one carrier drops its rates, other carriers often drop their rates in response. When a carrier raises its rates, other carriers often view this as an opportunity to raise their rates as well, as recently was the case when both AT&T and WorldCom raised their U.S. long distance rates.⁴

PLDT submits that if it were the case that PLDT and all other Philippine gateway carriers were reducing their rates, say from 16 cents to 12 cents, the Commission would view this as evidence of a competitive marketplace at work (much as when these carriers reduced their rates to 8 cents). But that same competitive marketplace can result in already reduced rates being raised as well. Whether the 12 cents per minute rate is achieved through a reduction or an increase in rates does not make the rate itself any less reflective of a competitive market.

5. Even if it were shown that no Philippine carrier is currently offering rates below 12 cents that would not establish that market forces could not push these rates down again. As PLDT’s own termination rates over the past few years have demonstrated, such rates regularly change over time in response to market forces. Today, given the acceptance of PLDT’s 12 cent per minute rate by more than 90 foreign and U.S. carriers, PLDT believes this rate is supported by the market. Nevertheless, this rate has been effective for less than a month, and there is no guarantee that it will “stick” once the current rate agreements expire. Further, it is absolutely within the power of AT&T and other carriers to seek to negotiate other rates both with PLDT and, separately, with other Philippine

¹ *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537, 541 (1954) (“this Court has never held that proof of parallel business behavior conclusively establishes agreement”).

² *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986).

³ *Id.* (emphasis added); see also *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984).

⁴ See *The Washington Post*, Financial E-1 (January 1, 2003).

carriers. So far, however, AT&T has not negotiated in good faith with PLDT, but has demanded a 6.5 cents per minute rate and has not moved from that demand.

6. There are strong indicia that the Philippines market is behaving competitively, and that the 12 cents per minute rate is just and reasonable. As set forth in PLDT's comments, there is ample evidence that the Philippines market is highly competitive and the 12 cents per minute rate is a reasonable one. This evidence includes:

- Having been deregulated in 1993, the Philippines today has nine international gateway facility operators, seven mobile operators, and dozens of fixed line operators. Whereas PLDT was once a monopoly carrier, today PLDT and its mobile subsidiary Smart have a combined market share of only about 50 percent.⁵ Mobile competitors, in particular, have grown rapidly and made in-roads against PLDT through "land-line substitution," and more competition is on its way. Digital recently entered the market, and Bayantel has been allocated spectrum by the NTC.
- Applying the Commission's own objective criteria for what is a competitive market, the Philippines clearly qualifies. The 12 cents per minute rate currently offered by PLDT is not only well below the FCC's benchmarks for developing countries like the Philippines, it is also below the 15 cents per minute benchmark set for highly developed countries. The Philippines also meets the standard for elimination of the ISP in its entirety, given that more than 50 per cent of the traffic is terminated at 25 per cent or more below the benchmark rate.
- Although PLDT recognizes that the benchmarks are just that, one must ask why PLDT and other carriers would offer rates so far below the benchmarks if they were not subject to competitive forces. As the Commission recognizes, "[u]nless a dominant carrier were subject to competitive pressures . . . it would have little incentive to reduce its rates substantially below the benchmarks."⁶
- As noted, PLDT's new termination rates are justified under its Cost Manual as submitted annually to the Philippine NTC.
- The NTC has twice confirmed in writing that it views these rates as just and reasonable. (Attachment B).

⁵ This market share estimate is based on the most recent report of Telegeography, and reflects a market defined as all U.S. to Philippines on-net traffic terminating with fixed line and mobile carriers.

⁶ *1998 ISP Reform Order*, 14 FCC Rcd 7963, 7983.

- According to the comments filed by Digital Telecommunications, AT&T unilaterally notified Digital that it would pay a 12 cents per minute termination rate for fixed line calls into the Philippines (and 16 cents per minute for mobile calls). (Digital Comments at 10). AT&T apparently views these rates as just and reasonable, otherwise it would not have proposed them to Digital. PLDT understands that AT&T has already reflected this rate increase in material provided to its retail customers.

* * * * *

In summary, as exemplified by the recent increase by AT&T and others of their U.S. domestic long distance rates, rates that go down in a competitive market can also go up. In comparison with the rates of carriers in most other countries with analogous economic circumstances and teledensity, rates in the Philippines have dropped faster and farther than most. For the FCC now to determine that such rates cannot move up, even to rates that remain substantially below the FCC's benchmarks, would be inconsistent with the policy of open and fair competition that the Commission has so effectively fostered. It would, moreover, discourage carriers in other countries, particularly those in less competitive markets, from reducing their rates in the first place for fear that once reduced, the FCC would not permit them to ever be raised again.

We appreciate the time you took to meet with us and other representatives of PLDT and the opportunity to provide you with the additional information that you requested. Pursuant to Section 1.49(f) of the Commission's rules, an electronic copy of this presentation is being submitted into the public record.

Respectfully submitted,

PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY

By: 

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Donald Abelson
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ATTACHMENT A

Arbinet - the Exchange - Buy & Sell Rates for Philippines Fixed Line Traffic
Date: 26 feb 2003 - 2240 GMT

Browse Summary

Exchange D		- Select EDP from list -		w extended rate and eligible/ineligible orders					
BROWSE ALL BIDS					BROWSE ALL ASKS				
Maximum	Available at		E1/T1			Available at		E1/T1	
Buy Rate	ASR	EDP	Capacity	Connection	Sell Rate	ASR	EDP	Capacity	Connection
<u>\$0.08250</u>	29.7	NY, LA, LON	1	PSTN	<u>\$0.10750</u>	36.0*	NY, LA, LON	28	PSTN
<u>\$0.08300</u>	55.7	NY, LA, LON	8	PSTN	<u>\$0.11100</u>	22.6*	NY, LA, LON	15	PSTN
<u>\$0.08400</u>	29.7	NY	6	PSTN	<u>\$0.11490</u>	14.2*	NY, LA, LON	12	PSTN
<u>\$0.08400</u>	60	NY, LA, LON	28	PSTN	<u>\$0.11490</u>	27.2*	NY, LA, LON	7	PSTN
<u>\$0.08450</u>	58	NY, LA, LON	1	PSTN	<u>\$0.11490</u>	59.9	NY, LA, LON	7	PSTN
<u>\$0.08450</u>	60	NY, LA, LON	28	VOIP	<u>\$0.11495</u>	33.7*	NY, LA, LON	8	PSTN
<u>\$0.08500</u>	65	NY, LA, LON	3	PSTN	<u>\$0.11495</u>	49.2*	NY, LA, LON	7	PSTN
<u>\$0.08600</u>	60	NY, LA, LON	4	PSTN	<u>\$0.11900</u>	18.5*	NY, LA, LON	8	PSTN
<u>\$0.08630</u>	40	NY, LA, LON	28	PSTN	<u>\$0.12000</u>	32.9*	NY, LA, LON	28	PSTN
<u>\$0.08630</u>	50	NY, LA, LON	56	VOIP	<u>\$0.12740</u>	65.6*	NY, LA, LON	14	PSTN
<u>\$0.08750</u>	40	NY, LA, LON	8	PSTN	<u>\$0.13300</u>	15.2*	NY, LA, LON	28	PSTN
<u>\$0.08800</u>	30	NY, LA, LON	2	PSTN	<u>\$0.13300</u>	23.0*	NY, LA, LON	10	PSTN
<u>\$0.08990</u>	29.7	NY, LA, LON	0	VOIP	<u>\$0.13300</u>	45	NY, LA, LON	0	VOIP
<u>\$0.09000</u>	29.7	NY, LA, LON	56	VOIP	<u>\$0.13500</u>	44	NY, LA, LON	28	PSTN
<u>\$0.09000</u>	29.7	NY, LA, LON	56	VOIP	<u>\$0.13500</u>	52.1*	NY, LA, LON	84	PSTN
<u>\$0.09000</u>	30	NY, LA, LON	56	VOIP	<u>\$0.13600</u>	42.4	NY, LA, LON	56	VOIP
<u>\$0.09000</u>	42	NY, LA, LON	56	VOIP	<u>\$0.14000</u>	22	NY, LA, LON	3	PSTN
<u>\$0.09000</u>	50	NY, LA, LON	56	VOIP	<u>\$0.14000</u>	28.5*	NY, LA, LON	5	PSTN
<u>\$0.09200</u>	29.7	NY, LA, LON	28	VOIP	<u>\$0.14300</u>	42.4	NY, LA, LON	28	PSTN
<u>\$0.09300</u>	30	NY, LA, LON	16	VOIP	<u>\$0.14400</u>	42.4	NY, LA, LON	8	PSTN
<u>\$0.10000</u>	29.7	NY, LA, LON	56	VOIP	<u>\$0.14700</u>	66.6	NY, LA, LON	56	VOIP
<u>\$0.10350</u>	10	NY, LA, LON	8	PSTN	<u>\$0.14900</u>	33.9*	NY, LA, LON	28	PSTN
<u>\$0.10350</u>	10	NY, LA, LON	34	PSTN	<u>\$0.14900</u>	42.4	NY, LA, LON	14	PSTN
<u>\$0.10350</u>	10	NY, LA, LON	95	PSTN	<u>\$0.15000</u>	42.4	NY, LA, LON	7	PSTN
<u>\$0.10350</u>	29.7	NY, LA, LON	5	PSTN	<u>\$0.15820</u>	13.0*	NY, LA, LON	3	PSTN
<u>\$0.10350</u>	29.7	NY, LA, LON	28	PSTN	<u>\$0.16000</u>	49.0*	NY, LA, LON	19	PSTN
<u>\$0.10350</u>	29.7	NY, LA, LON	28	PSTN	<u>\$0.19000</u>	40.3*	NY, LA, LON	12	PSTN
<u>\$0.10400</u>	29.7	NY, LA, LON	8	PSTN					
<u>\$0.10500</u>	60	NY, LA, LON	4	PSTN					
<u>\$0.10500</u>	60	NY, LA, LON	17	PSTN					
<u>\$0.11000</u>	29.7	NY, LA, LON	56	VOIP					
<u>\$0.11000</u>	30	NY, LA, LON	2	PSTN					
<u>\$0.11000</u>	45	NY, LA, LON	16	VOIP					
<u>\$0.11100</u>	29.7	NY, LA, LON	28	PSTN					
<u>\$0.11150</u>	30	NY, LA, LON	0	VOIP					
<u>\$0.11490</u>	40	NY, LA, LON	6	PSTN					
<u>\$0.11490</u>	40	NY, LA, LON	6	PSTN					
<u>\$0.11490</u>	40	NY, LA, LON	28	PSTN					
<u>\$0.11490</u>	45	NY, LA, LON	28	VOIP					
<u>\$0.11500</u>	20	NY, LA, LON	1	PSTN					
<u>\$0.11500</u>	20	NY, LA, LON	1	PSTN					
<u>\$0.11500</u>	20	NY, LA, LON	1	PSTN					
<u>\$0.11500</u>	20	NY, LA, LON	4	PSTN					
<u>\$0.11500</u>	29.7	NY, LA, LON	0	VOIP					
<u>\$0.11500</u>	29.7	NY, LA, LON	4	PSTN					
<u>\$0.11500</u>	29.7	NY, LA, LON	56	PSTN					
<u>\$0.11500</u>	29.7	NY, LA, LON	56	VOIP					
<u>\$0.11500</u>	29.7	NY, LA, LON	84	PSTN					
<u>\$0.11500</u>	30	NY, LA, LON	56	VOIP					
<u>\$0.11500</u>	60.5	NY, LA, LON	56	VOIP					
<u>\$0.11550</u>	33	NY, LA, LON	4	PSTN					
<u>\$0.11560</u>	18	NY, LA, LON	4	PSTN					
<u>\$0.11560</u>	29.7	NY, LA, LON	9	PSTN					
<u>\$0.11560</u>	29.7	NY, LA, LON	12	PSTN					
<u>\$0.11700</u>	25	NY, LA, LON	4	PSTN					
<u>\$0.12000</u>	20	NY, LA, LON	4	PSTN					
<u>\$0.12000</u>	29.7	NY, LA, LON	2	PSTN					
<u>\$0.12000</u>	30	NY, LA, LON	6	PSTN					
<u>\$0.12000</u>	40	NY, LA, LON	2	PSTN					
<u>\$0.12000</u>	40	NY, LA, LON	4	VOIP					
<u>\$0.12000</u>	40	NY, LA, LON	8	PSTN					
<u>\$0.12000</u>	65	NY, LA, LON	1	PSTN					
<u>\$0.12240</u>	29.7	NY, LA, LON	8	PSTN					
<u>\$0.12240</u>	31.5	NY, LA, LON	4	VOIP					
<u>\$0.12240</u>	31.5	NY, LA, LON	28	VOIP					
<u>\$0.12240</u>	40	NY, LA, LON	9	PSTN					
<u>\$0.12240</u>	40	NY, LA, LON	31	PSTN					
<u>\$0.12250</u>	45	NY, LA, LON	23	PSTN					

<u>\$0.12310</u>	29.7	NY, LA, LON	12	PSTN
<u>\$0.12450</u>	30	NY, LA, LON	12	PSTN
<u>\$0.12740</u>	40	NY, LA, LON	56	VOIP
<u>\$0.12740</u>	45	NY, LA, LON	17	PSTN
<u>\$0.12740</u>	60.2	NY, LA, LON	28	VOIP
<u>\$0.12750</u>	29.7	NY, LA, LON	4	PSTN
<u>\$0.12750</u>	29.7	NY, LA, LON	4	PSTN
<u>\$0.12750</u>	29.7	NY, LA, LON	8	PSTN
<u>\$0.12750</u>	45	NY, LA, LON	56	VOIP
<u>\$0.12800</u>	29.7	NY, LA, LON	0	VOIP
<u>\$0.12800</u>	49	NY, LA, LON	36	PSTN
<u>\$0.12990</u>	29.7	NY, LA, LON	2	VOIP
<u>\$0.12990</u>	29.7	NY, LA, LON	4	VOIP
<u>\$0.12990</u>	29.7	NY, LA, LON	56	VOIP
<u>\$0.13000</u>	29.7	NY, LA, LON	56	VOIP
<u>\$0.13200</u>	25	NY, LA, LON	4	PSTN
<u>\$0.13200</u>	25	NY, LA, LON	4	PSTN
<u>\$0.13200</u>	29.7	NY, LA, LON	19	PSTN
<u>\$0.13300</u>	25	NY, LA, LON	2	PSTN
<u>\$0.13300</u>	25	NY, LA, LON	4	PSTN
<u>\$0.13300</u>	40	NY, LA, LON	16	VOIP
<u>\$0.13300</u>	40	NY, LA, LON	28	PSTN
<u>\$0.13300</u>	40	NY, LA, LON	84	PSTN
<u>\$0.13300</u>	50	NY, LA, LON	12	PSTN
<u>\$0.13300</u>	50	NY, LA, LON	15	PSTN
<u>\$0.13500</u>	29.7	NY, LA, LON	4	PSTN
<u>\$0.13500</u>	30	NY, LA, LON	4	PSTN
<u>\$0.13500</u>	35	NY, LA, LON	2	PSTN
<u>\$0.13500</u>	35	NY, LA, LON	28	PSTN
<u>\$0.13500</u>	37	NY, LA, LON	28	VOIP
<u>\$0.13500</u>	50	NY, LA, LON	56	VOIP
<u>\$0.14000</u>	29.7	NY, LA, LON	3	PSTN
<u>\$0.14000</u>	29.7	NY, LA, LON	8	PSTN
<u>\$0.14000</u>	29.7	NY, LA, LON	14	PSTN
<u>\$0.15000</u>	70	NY, LA, LON	2	PSTN
<u>\$0.18000</u>	15	NY, LA, LON	16	VOIP



Philippines, Proper					ites		
Bid Market	Bid Routing Priority	Bid ASR	Bid ASR Variance	Match Type	Bid Price	Ask Price	Ask ACD
Philippines, Proper	Rate	29.7	15%	Soft	\$0.11560	\$0.10750	8.9
Philippines, Proper	Quality	49	5%	Var	\$0.12800	\$0.12740	8.6
Philippines, Proper	Quality	29.7	15%	Soft	\$0.11500	\$0.11490	10.7
Philippines, Proper	Rate	29.7	5%	Var	\$0.14000	\$0.10750	8.9
Philippines, Proper	Quality	49	5%	Var	\$0.12800	\$0.12000	11.9
Philippines, Proper	Rate	29.7	15%	Soft	\$0.11560	\$0.11100	10.1
Philippines, Proper	Quality	29.7	10%	Var	\$0.14000	\$0.12740	8.6



Traded Volume: ;100,000 minutes

Philippines, Manila							
Market	Routing Priority	ASR	ASR Variance	Type	Bid Price	Ask Price	Ask ACD
Philippines, Manila	Rate	29.7	15%	Soft	\$0.11560	\$0.10750	8.9
Philippines, Proper	Quality	49	5%	Var	\$0.12800	\$0.12740	8.6
Philippines, Manila	Quality	29.7	15%	Var	\$0.11490	\$0.11490	10.7
Philippines, Manila	Rate	29.7	0%	Hard	\$0.11000	\$0.10750	8.9
Philippines, Manila	Rate	29.7	5%	Soft	\$0.13500	\$0.10750	8.9
Philippines, Proper	Quality	49	5%	Var	\$0.12800	\$0.11490	10.7
Philippines, Manila	Rate	29.7	15%	Soft	\$0.11560	\$0.11100	11.1

Tuesday, 02/25/2003

⌋	All Markets (utes)
⌋		
⌋	50,000 - 100,000	es
⌋	25,000 - 50,000	s
⌋	2,500 - 25,000	

Ask ASR	Ask Market	Ask Time of Day	Volume	Call Market
36.8	Proper	All Day	32.30%	Proper
57.2	Proper	All Day	22.90%	Proper
49.8	Proper	All Day	13.30%	Proper
36.8	Proper	All Day	5.40%	Proper
46.2	Proper	All Day	5.40%	Proper
30.1	Proper	All Day	5.00%	Proper
57.2	Proper	All Day	2.00%	Proper

Tuesday, 02/25/2003

⌋	All Markets (utes)
⌋		
⌋	50,000 - 100,000	es
⌋	25,000 - 50,000	s
⌋	2,500 - 25,000	

Ask ASR	Ask Market	Ask Time of Day	Volume	Call Market
36.8	Proper	All Day	29.30%	Manila
57.2	Proper	All Day	29.00%	Manila
49.8	Proper	All Day	12.90%	Manila
36.8	Proper	All Day	4.20%	Manila
36.8	Proper	All Day	4.10%	Manila
49.8	Proper	All Day	4.10%	Manila
48.4	Manila	All Day	2.70%	Manila

ATTACHMENT B



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

February 26, 2003

The Honorable Commissioners
Federal Communications Commission
Washington, DC 20554 USA

Subject : Termination Rates on US-Philippines Route

SIRS/MESDAMES:

It has come to our attention that AT&T and MCI/Worldcom have filed separate petitions before the Federal Communications Commission (FCC) alleging "whipsawing" and disruption of service on the U.S.-Philippine route on the basis that AT&T and MCI/Worldcom have not reached an agreement with Philippine carriers on termination rates.

It is the position of the National Telecommunications Commission (NTC) in keeping with international practice, commercial arrangements and national laws that termination rates are private commercial arrangements entered into by carriers of their own free will pursuant to the Constitutional guarantee of freedom to contract. It is our position that the Philippine carriers' US\$0.12 per minute (for calls terminating to fixed line network) and US\$0.16 per minute (for calls terminating to mobile network) termination rate offers are still well below the US\$0.19 per minute FCC benchmark and the ITU suggested rate of US\$0.238 applicable to countries such as the Philippines and are, therefore, fair and reasonable. The Philippine termination rates are in accord with the benchmarks of the US and the International Telecommunications Union (ITU) and have been accepted by most foreign operating administrations worldwide.

Consistent with our Memorandum Order dated February 7, 2003, which we attach for your reference, we have ordered our Philippine carriers with existing and effective agreements with foreign carriers relative to termination rates to **comply with the terms thereof, specifically in maintaining the flow of traffic in and between circuits and facilities covered by such agreements.** In the event that there exists no effective agreements, they are encouraged to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service. **It is, however, understood that absent any provisional or interim arrangement or agreement, there**

would be termination of service between the parties who are thereby encouraged to seek other routes or options to terminate traffic to the Philippines.

The NTC is most concerned with the request of AT&T and MCI/Worldcom for an immediate relief seeking the issuance by FCC of an order stopping US carriers from paying settlements to Philippine carriers until the termination rate issue is resolved. If so ordered by the FCC, this will definitely create dire consequences to the Philippine economy and is definitely detrimental for the Philippines, a developing economy with an infant telecommunications infrastructure that badly needs foreign exchange revenues.

We strongly urge FCC to give due consideration to the official position taken by the Philippines regulatory body, consistent with international comity and in the interest of all economies.

Very truly yours,


ARMY JANE R. BORJE
Commissioner


KATHLEEN G. HECETA
Deputy Commissioner

Copyfurnished:

Mr. Donald Abelson
Chief
International Bureau
Federal Communications Commission



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

February 07, 2003

MEMORANDUM ORDER

Philippine Long Distance Telephone Company (PLDT)
SMART Communications Inc.
GLOBE Telecom Inc.
Bayan Telecommunications Inc.
Other Public Telecommunications Entities (PTEs) similarly situated

SUBJECT: NTC Memorandum Order dated January 31, 2003 re: Maintaining Status Quo of existing communications circuits in the interest of public service and national welfare.

In response to the Order of this Commission dated 31 January 2003, as duly enfranchised and authorized service providers in the Philippines, you made representations and commitments before the Commission, to always maintain your communication circuits open and ensure no disruption of service. You have likewise informed the Commission that in keeping with international practice, national laws and commercial agreements, you shall protect and promote your interest to negotiate mutually agreed international termination rates with other foreign administrations.

Further, the Commission is informed that as of this date, you have arrived at a number of bilateral agreements/arrangements for the increase in termination rates, with operating foreign administrations. While two, three or four administrations have not agreed on the increased termination rates, negotiations are on-going.

As shown, Philippine termination rates, even at increased rates, are still well below the FCC benchmark rate of US\$.19/minute for low middle income economies, such as the Philippines. It is also shown that these rates are low compared with ITU suggested target settlement rates for countries with teledensity between 1 to 5 telephones per 100 population which is US\$.238 per minute.

WHEREFORE, with your commitment and pursuant to the mandate to give assistance and encouragement to Philippine international carriers to establish interconnection with other countries so as to provide access to international communications highways on competitive basis, the National Telecommunications Commission (NTC) hereby AMENDS its Order dated 31 January 2003 with respect to the termination rates, as follows:

1. Philippine telecommunication carriers with existing and effective agreements with foreign telecommunication carriers relative to termination rates shall comply with the terms thereof, specifically in maintaining the flow of traffic in and between circuits and facilities covered by such agreements; and
2. Philippine telecommunication carriers without existing and effective agreements relative to termination rates are encouraged, as stated in the Order of January 31, 2003, to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service.

This Order is issued with a warning that the Commission shall exact observance of your responsibilities as a public service provider, to include that of keeping open your communication circuits to promote **PUBLIC SERVICE AND NATIONAL WELFARE** and maintain level playing field in the conduct of your operations. All other interconnection issues/concerns relative to the termination rates, such as access charges, shall be addressed accordingly in the context of this memorandum in compliance with the interconnection mandate.

FOR COMPLIANCE.


ARMI JANE R. BORJE
Commissioner


KATERBEN G. HECETA
Deputy Commissioner


JORGE V. SARMIENTO
Deputy Commissioner

Copy furnished: The Executive Secretary, Malacañang
The Secretary, Dept. of Transportation and Communications
Attn: Undersecretary Virgilio L. Peña